

LABOUR DEPARTMENT

The 3rd February, 1995

No. 14/13/87-6 Lab./124.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Executive Engineer, J. L. N. Feeder, Division, Rohtak *versus* Kamlesh Kumari.

IN THE COURT OF SHRI P. L. KHANDUJA PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 86 of 1990

Between

SMT. KAMLESH KUMARI, W/O SHRI ATTAR SINGH, VILLAGE BHALGARH P. O. MATANHAIL,
DISTRICT ROHTAK. .. Workman.

AND

THE MANAGEMENT OF M/S EXECUTIVE ENGINEER, J. L. N. FEEDER, DIVISION, ROHTAK.

Present :

Shri S. S. Suhag, Authorised Representative for the workman.

Shri S. C. Verma, A. D. A. for the management.

AWARD

In exercise of the powers conferred by Sub-Clause (c) of Sub Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute between the parties, named above, this Court for adjudication,—*vide* labour Department Endorsement No. SOV/Roh./83—90/36029—34, dated the 11th September, 1990:—

Whether the termination of services of Smt. Kamlesh Kumari is justified and in order ? If not, to what relief she is entitled ?

2. After receipt of the reference order usual notices were issued to the parties. The workman appeared and filed her claimstatement that she was working with the employer since 5th June, 1987 as Beldar on the pay scale of Rs. 350—5—360/8—400/10—430 *plus* usual allowances and has not given any chance of any complaint during her tennure of period of service ; the management terminated her service on 15th May, 1989 without assigning any reason or reasonable cause even though the workman and conduct of the workman was always quite satisfactory ; the workman was appointed on regular basis and completed more than 240 days, therefore, the workman is entitled to be heard before giving any sort of punishment to her, therefore, the above said termination is absolutely, illegal, unwarranted and against the principle of natural justice ; that at the time termination no notice was given to the workman and no enquiry was held by the management and seniority list was displaced at the time of termination and as charge-sheet was not issued by the management and no notice was sent to the Government on prescribed form and nor the management paid retrenchment compensation to the workman, therefore, the management contravend Section 25-F of the I. D. Act, Act. the some junior Beldar are also working in the office of the management and the management has not adopted the procedure last come first go, therefore, the management have contravend Section 25-F and Section 25-H of the I. D. Act and hence this claim statement was filed.

3. Reply of the claimstatement filed by the management is that no sanction of the post has been received from the Government and on the this account the termination notice was given and it is submitted that the plaintiff was appointed on *ex gratia* grant Government to the workman but her sanction was not received ; the proper notice was given to the plaintiff and on account of not receiving the sanction from the Government, her services were terminated ; that the plaintiff was given a compensation of Rs. Rs. 100102—45 paise by the Commissioner's Workmen's Compensation Act, circle, Rohtak on account of death of her husband, the amount of award since been deposited by the department in his office and the case may be dismissed with costs.

4. Replication was filed by the workman, on the pleadings of the parties, the following issues were framed :—

1. As per terms of reference ?

2. Relief.

5. My findings on the above issues with reasons thereof are as under :—

Issue No. 1 :

The workman has come into witness box WW-1 and closed her evidence. The management has examined Shri Bhagwan Dass, S.D.O., J.L.N. Jhajjar as MW-1 and also examined Shri Sant Ram, S.D. as MW-2 and as MW-3 is Jai Dev Dahiya, J.E. and closed his evidence.

7. Shri Bhagwan Dass, S.D.O. MW-1 has made the statement that the husband of the workman was appointed on *ad hoc* basis and the workman also appointed on *ad hoc* basis after the death of her husband but no Government orders has been received for the appointment of the workman. She was paid the amount of compensation after death of her husband and she had married with her JETH, and one child is born of them out of that marriage.

8. Shri Bhagwan Dass admitted that any legal heir of the deceased employees is appointed on the compensate ground, —vide order Ex. M-1 dated the 13th July, 1991.

9. The applicant has made statement that she was appointed as Beldar on 5th June, 1987 and she was terminated on 15th May, 1989 without paying any compensation, notice and notice pay etc. and hence the termination as pleaded which is illegal and unwarranted.

10. Shri B. S. Subag, Authorised Representative for the workman made submission that service of the workman is completed for more than 240 days in 12 calendar months. She was entitled to the relief as given in Section 25-F of the I.D. Act. From the evidence it is proved that workman had worked for more than 240 days in 12 calendar months and she has been retrenched without compliance of Section 25-F of the I.D. Act.

11. Now the submission made by the learned A.D.A. for the management is that as the department has not received the sanction order of her appointment but she has not able to get the sanction of the Government of her appointment, there was no option to relieve her from the job. The question when she was appointed was there any terms and condition that her appointment was subject to approval of the State Government or not. I have gone through the appointment letter of the workman which photostate copy is Ex. M-1 and which is read as under :—

“This post is purely temporary and does not carry any benefits towards pension/gratuity etc. and can be brought to terminate at any time without any assignment of any reason for the same.”

12. In view of the letter Ex. M-1 to I do not find the condition that she will have to get sanction order from the State Government for her appointment as workman. When the workman was appointed and she had served for more than 240 days service in 12 calendar months and she has been retrenched without compliance of Section 25-F of the I.D. Act, thus the termination order is illegal and I decide it so.

Issue No. 2 (Relief) :

13. In view of my findings on the above issue I accept the reference petition and claim statement of the workman and hold that the workman is entitled to be reinstated with continuity of service but with 50% (Fifty) of back wages. The reference is answered and returned accordingly. However, the parties left to bear their own costs.

P. L. KHANDUJA,

The 2nd January, 1995.

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. reference 86-90/42, dated the 13th January, 1995.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.